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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/632,597

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Robert C. Freclander

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7590

08/28/2006

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EXAMINER

LHYMN, EUGENE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/632,597	Applicant(s) FREELANDER, ROBERT C.	
	Examiner Eugene Lhymn	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,6,8,12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6,8,12 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 6, 8, 12, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ullrich (US 2581613) in view of Panknin (US 3333722). With respect to claims 1 & 12, Ullrich discloses a rectangular top element (upper rim of the tray) and a rectangular bottom element (lowermost portion of tray comprising overlaying & intersecting wire members), side elements (Fig. 2, item 1) that are angled such that the bottom fits snugly in the top of another tray. Also, Ullrich discloses the said elements being made of wire (Col 2, Lines 14-16). However, Ullrich fails to disclose corner elements, and the top and bottom being offset by a distance of one thickness of the wire. Nonetheless, Panknin teaches a wire container that is stackable that has corner elements, in order to facilitate stacking of adjacent trays, thereby providing an equivalent means of stacking regarding the existing stacking bails 11. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the stacking bails of Ullrich with corner elements as taught by Panknin so as to provide an alternate and equivalent means of stacking. With respect to the offset limitation, it would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the offset as such, since it has been held that discovering an optimum value of a result

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effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claims 6 & 16, Ullrich teaches the side elements being attached to the top and bottom.

With respect to claim 8, Ullrich teaches the wire having a circular cross section.

3. Claims 3, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ullrich in view of Panknin as applied to claim 1 above, and further in view of Gold (US 2785725). With respect to claims 3 & 14, Ullrich as modified above discloses the claimed invention except for the fabric cover extending across the sides and bottom. However, Gold teaches a wire container having a fabric cover extending over the sides and bottom, so as to prevent items from falling through gaps in the wire mesh. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a fabric cover to the container of Ullrich as taught by Gold so as to prevent items from falling through gaps in the wire mesh.

4. Claims 5, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ullrich in view of Panknin as applied to claim 1 above, and further in view of Averill (US 2923428). With respect to claims, 5 & 15, Ullrich as modified above discloses the claimed invention except for the U-shaped handles, however Averill teaches a wire container having said handles, thereby providing gripping means. Therefore, it would

have been obvious to one of ordinary skill in the art at the time of the invention to add handles to the container of Ullrich as taught by Averill so as to provide gripping means.

Response to Arguments

5. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER

Steve Castellano
Primary Examiner